AFR

(22)

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.Appeal No.327 of 2002

APPELLANT

Mayaram Yadav
S/o Awadhram Yadav,
Aged around 47 years,
Occupation – Agriculture,
R/o Vill- Malidih,
P.S. – Pithora, District – Mahasamund (C.G.)

Versus

RESPONDENT

State of Chhattisgarh,
Through – P.S. Pithora,
District – Mahasamund (C.G.)

Appearance:

Smt. Usha Chandrakar, counsel for the appellant.
Shri Sandeep Yadav, Dy. Govt. Advocate for the State.

ORAL JUDGMENT
(15.05.2007)

SUNIL KUMAR SINHA, J

Heard.

This appeal is directed against the judgment of conviction and order of sentence dated 26.12.2001 passed in Sessions Trial No.318/2001 by the First Additional Sessions Judge, Mahasamund, whereby, the said Court after holding the appellant guilty of the offence punishable under 307 of IPC, sentenced him to undergo R.I. for 10 years and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 3 months.

The brief facts are that the victim namely Smt. Bhagwatin Bai, a lady aged about 65 years, is the mother of the appellant. On 15/5/2001 at about 7:00 a.m, the appellant demanded some money from his mother. The mother denied to give him money and tried to run away, on which, the appellant chased her and

thereafter, he assaulted her with an iron equipment known as *Suma* (a nail about 24 cm in length pointed at one end and rectangular on the other end), due to which, she received the following injuries :

1. One incised penetrating wound on the left supra clavicular region placed at the third portion of the middle of clavicle admeasuring 2.5 x 0.5 x 0.2 cm, which was admitting probe to the depth of 5 cm. The margins of the wound were cut and well defined. The breadth was greater in the middle and lesser on both the ends.
2. One incised wound situated at upper portion of left scapula admeasuring 1.5 x 0.2 x 0.2 cm and another incised wound was adjacent to the said wound admeasuring 1 x 0.2 x 0.5 cm.
3. One incised wound on the right upper inter-scapula region admeasuring 0.3 x 0.2 x 0.1 cm.
4. Once incised wound on the sternum at the left upper side admeasuring 2 x 0.5 x 0.2 cm.
5. One incised wound on the right breast admeasuring 1.5 x 0.4 x 0.2 cm.
6. One incised – lacerated wound superficial on the inner side of right arm admeasuring 1 x 0.3 x 0.1 cm.
7. One abrasion near the lower part of left clavicle region admeasuring 1 x 0.2 cm.
8. One superficial incised-lacerated wound on the left middle forearm admeasuring 1 x 0.2 x 0.1 cm.

According to the injury report, injuries No. 2 to 8 were simple in nature and they were likely to be healed up within 8-10 days. However, injury No.1 was said to be sufficient to cause death in ordinary course of nature. The matter was reported to the Police by the mother at about 10 a.m. on the same day, which was reduced into writing vide FIR (Ex.P/1). During the course of

investigation, Sari and weapon of offence (*Suma*) were seized and the victim was sent for medical examination, on which, injury report (Ex.P/12) was obtained. After completion of the usual investigation, charge sheet was filed. The conviction of the appellant is based upon the sole testimony of the victim namely Bhagwatin Bai (PW-1), which is supported by the evidence of Dr. Mahavir Agrawal (PW-7), who had medically examined the victim and has prepared the report (Ex.P/12), which is further supported by the evidence of Prithvi Singh (PW-4), who happens to be an eye-witness of the incident.

Learned counsel for the appellant argues that in the facts and circumstances of this case, an offence under Section 307 of IPC would not be made out. Her submission is that at the most, the offence would fall under Section 324 of IPC. In the alternative, she also argues that if the offence under Section 307 of IPC is held to be proved against the appellant, the appellant has already undergone for a period of about 6 years, as he is in jail since 15/5/2001, therefore, his punishment may be reduced to the period already undergone.

On the other hand, learned counsel for the State opposes the aforesaid arguments. His submission is that an offence under Section 307 of IPC would be made out against the appellant and looking to the facts and circumstances of this case, the punishment awarded to the appellant is just and proper.

I have heard learned counsel for the parties at the length and have also perused the records of Sessions Trial.

So far as constitution of offence under Section 307 of IPC is concerned, it has been held by the Apex Court in the matter of ***Sarju Prasad – Vs- State of Bihar AIR 1965 S.C. 843,*** that in order to bring the offence home to accused, the prosecution must establish that his intention was one of the three kinds mentioned in Section 300 I.P.C. The state of mind of the accused has to be deduced from surrounding circumstances and motive would be a relevant circumstance and where the evidence is not sufficient to

establish with certainty, existence of requisite intention or knowledge of accused, the accused can be convicted only under Section 324 and not under Section 307 of IPC.

In the matter of ***Hari Kishan & State of Haryana -Vs- Sukhbir Singh and others AIR 1988 S.C. 2127,*** the Apex Court further held that under Section 307 IPC, what the Court has to see is, whether the act irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in that section. The intention or knowledge of the accused must be such as is necessary to constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder." Under Section 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention.

In the present case, if we look into the evidence of victim-Bhagwatin Bai (PW-1), it would appear that on the fateful day, appellant, who had come from jail just 3 months prior to the date of incident, started abusing his son namely Bhojraj, on this, Bojraj retaliated and appellant took a piece of wood and started chasing Bhojraj, who entered into a room and closed the room from inside. On this, the appellant closed the room from outside by putting *Sankal* of the room. It is after this, the appellant demanded money from his mother, who denied and then, he assaulted his mother by *Suma* on her neck and shoulder portions. He gave repeated blows (8 in number), due to which, she became unconscious. She has stated that Prithvi Singh (PW-4) and one Dev Yadav also reached to the spot and have seen the incident. She has admitted to lodge the First Information Report, which she has proved as Ex.P/1. This version of the victim is supported by the evidence of Pritham Singh (PW-4), who stated that while he was sitting at the shop of one

Manharan Yadav and was reading newspaper, he heard hue and cry of the victim like "*Bachao Bachao*", on which, he went to the spot and saw that the appellant had assaulted the victim with the *Suma*. He is the man who snatched the *Suma* from the hands of the appellant.

In light of the above evidence of the victim and Prithvi Singh (PW-4), if we look into the injury report of the victim, it would appear that she received as many as 8 injuries and nearly all the injuries were incised wounds. The weapon used by the victim (*Suma*) is a sharp edged weapon by one end having the other end rectangular and the manner in which the weapon is used clearly shows that the intention of the appellant was to kill the victim. The appellant has given repeated blows to the victim, who is not only his mother but was also a lady aged about 65 years and the depth of injury No.1 would show the severity of the blow offered by the appellant to the victim.

Needless to say that the parts of the body,which were chosen by the appellant was the scapular region of the victim and also her portion of sternum, which are the vital parts of the body and cumulative effect of the factors would suggest that in fact, the appellant has attempted the life of his mother with a weapon like *Suma* (a big nail), by which, she received as many as 8 injuries.

Considering the facts and circumstances of this case, particularly considering the nature of injuries received by the victim and other circumstances, referred to above, I am of the opinion that in this case, the offence committed by the appellant would fall under Section 307 of IPC and arguments advanced by learned counsel for the appellant that an offence under Section 307 of IPC would not be made out cannot be sustained.

So far as quantum of punishment is concerned, learned counsel for the appellant argues that looking to the relationship between the victim and appellant, which is of mother and son, a lineant view should be taken in this case. She refers to the decision rendered in the matter of ***Ram Kumar vs. State (NCT) of Delhi***

1999 CRI. L. J. 3522. In the said case, the appellant was convicted under Section 307 of IPC and sentenced to undergo imprisonment for 10 years. The Supreme Court considering the nature of relationship of the injured and appellant and other facts and circumstances of the case said that the ends of justice would be met if the sentence of rigorous imprisonment for 10 years, for the offence punishable under Section 307 of IPC, is reduced to 7 years rigorous imprisonment.

Now what should be adequate sentence in this case is a matter for consideration.

The principle of proportion between crime and punishment is governed by the "*Doctrine of just desert*". The doctrine is the foundation of a criminal sentence which is ultimately awarded for a punishment to the wrong doer. What one really deserves should be the punishment for having committed a crime is the underlying principle. The punishment must not be disproportionately great is a corollary of "*just desert*" which is governed by the same principle which says that there cannot be a punishment without guilt and the basic element behind the principle is the proportion between crime and punishment. The lesser is the gravity of the crime, the smaller would be the punishment and the greater is the gravity of the crime, the higher would be the punishment, subject to the ancillary factors for determining the proportion of the same, though all further subject to the statutory obligations specifically provided by law in force.

In the present case, since the son has attempted the life of mother on account of a petty dispute regarding demand of some money by him, which was denied by the mother and he was not previously armed with the weapon used by him and the overt act was committed at once though was meditated, leading to causing of as many as 8 injuries, out of which, one was likely to be fatal to life, I am of the opinion that the sentence of 7 years R.I. would be sufficient to meet the ends of justice in this case and accordingly, I

reduce the sentence under Section 307 of IPC from 10 years R.I. to 7 years R.I.

In the result, the appeal is partly allowed.

The conviction of the appellant under Section 307 of IPC is maintained. However, the punishment of 10 years R.I. under Section 307 of IPC awarded to him is reduced to 7 years R.I. in the said offence. The fine amount shall be paid by him, failing which; he shall further undergo R.I. for 3 months.

Sd/-
SUNIL KUMAR SINHA
Judge

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